



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2004

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2004-4064

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201727.

The City of Waco (the "city") received a request for information pertaining to a specified person, to include information concerning five specified offense reports. You indicate that you have provided the requestor with some of the requested information. You claim, however, that portions of the remaining requested information are excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301(b) requires that a governmental body ask the attorney general for a decision as to whether requested information must be disclosed and state the exceptions to disclosure that apply to the requested information not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, written comments stating the reasons why the stated exceptions to disclosure apply that would allow the requested information to be withheld and a copy of the specific information requested or representative samples of it, labeled to indicate which exceptions to disclosure apply to which parts of the documents. *See id.* § 552.301(e).

You state that the city received the present request for information on March 1, 2004. Therefore, the city had until March 15, 2004 to state the exceptions to disclosure that apply to all of the information at issue and until March 22, 2004 to provide us with all of the information required to be submitted to us for review under section 552.301(e). We note, however, that the city did not state that some of the requested information was excepted from disclosure until March 23, 2004 and did not provide us with some of the items required to be submitted to us under section 552.301(e) until that same date. Accordingly, we conclude that the city failed to comply with the procedural requirements of section 552.301 in requesting this decision from us with regard to that particular information.

Because the city failed to comply with the procedural requirements of section 552.301 in requesting this decision from us with regard to that particular information, that information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest in order to overcome the presumption that this particular information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes requested information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since the city claims that this particular information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy, we will address that claim with regard to this information, as well as the remaining requested information.

Next, we note that the submitted information includes a "Texas Peace Officer's Accident Report," which is subject to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this instance, we find that the requestor has not provided the city with at least two of the three pieces of information required under section 550.065(c)(4). Accordingly, we conclude that the city must withhold the accident report form that we have marked pursuant to section 550.065(c)(4) of the Transportation Code.

You indicate that social security numbers that are contained within the remaining submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C.

§ 405(c)(2)(C)(viii)(I).<sup>1</sup> These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Thus, we have no basis for concluding that social security numbers contained within the remaining submitted information are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the city should ensure that they were not obtained and are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

You claim that the information that you submitted to us as Exhibit 6 is excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. We note that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c).

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former

---

<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office previously concluded that section 58.007, as enacted by the Seventy-fourth Legislature, did not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. *See* Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). The legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. Because Exhibit 6 is a juvenile law enforcement record pertaining to conduct occurring before January 1, 1996, we find that section 51.14(d) is applicable. Accordingly, we conclude that the city must withhold Exhibit 6 in its entirety pursuant to section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

In addition, we note that criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Further, when a governmental entity compiles information that relates to a specific individual as a criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not.<sup>2</sup> *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3

---

<sup>2</sup> Section 552.101 also encompasses information that is protected from disclosure by the common-law right to privacy.

(1993). Accordingly, we conclude that to the extent that the requested information contains any CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy on the basis of *Reporters Committee*, the city must withhold such information pursuant to section 552.101 of the Government Code. *Cf.* Gov't Code § 411.082(2) (definition of criminal history record information does not include driving record information).

You also claim that some of the information that you submitted to us as Exhibit 5 is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that Exhibit 5 contains information that deals with the detection, investigation, and/or prosecution of a crime that is still open and pending. However, we note that Exhibit 5 pertains to an alleged terroristic threat that occurred on July 25, 1998. Although you state that this particular case is still open and pending, it appears that the statute of limitations has already run for this matter. *See* Penal Code § 22.07; *see also* Crim. Proc. Code, arts. 12.01, .02. You have neither informed us that any criminal charges were filed within the limitations period nor otherwise adequately explained how or why the release of the information at issue in this particular case "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Accordingly, we conclude that the city may not withhold any portion of Exhibit 5 under section 552.108(a)(1) of the Government Code.

In addition, you claim that some of the information that you submitted to us as Exhibits 3 and 4 is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You indicate that the criminal investigations associated with Exhibits 3 and 4 concluded in final results other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) of the Government Code is applicable to the information that you seek to withhold in Exhibits 3 and 4 under that particular exception to disclosure.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th

Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, we conclude that with the exception of basic information that must be released to the requestor, the city may withhold the information that it seeks to withhold in Exhibits 3 and 4 under section 552.108(a)(2) of the Government Code based on that particular exception to disclosure. We note, however, that the city maintains the discretion to release all or part of this information that is not otherwise confidential by law. See Gov't Code § 552.007.

Finally, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to: "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(1)-(3). Based on our review of your arguments and the remaining submitted information, we conclude that the city must withhold the portions of this information, which we have marked, pursuant to section 552.130 of the Government Code.

In summary, the city must withhold the accident report form that we have marked pursuant to section 550.065(c)(4) of the Transportation Code. Social security numbers contained within the remaining submitted information may be confidential under federal law. The city must also withhold Exhibit 6 in its entirety pursuant to section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. To the extent that the requested information contains CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy on the basis of *Reporters Committee*, the city must also withhold any such information pursuant to section 552.101. With the exception of basic information that must be released to the requestor, the city may withhold the information that it seeks to withhold in Exhibits 3 and 4 under section 552.108(a)(2) of the Government Code. The city must withhold the portions of the submitted information, which we have marked, pursuant to section 552.130 of the Government Code. The city must release the remaining submitted information to the requestor to the extent that it has not already done so.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 201727

Enc. Marked documents

c: Ms. Octavia Cooper  
768 N. Merrill Avenue, Apartment 268  
Duncanville, Texas 75116  
(w/o enclosures)